

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**SYHEED WILSON,** )  
Plaintiff, )  
 ) C.A. No. 18-123 Erie  
 )  
v. )  
 ) District Judge Susan Paradise Baxter  
**OFFICER MILLER,** )  
Defendant. )

**MEMORANDUM ORDER**

This *pro se* prisoner civil rights action was received by the Clerk of Court on April 30, 2018 and was referred to the undersigned, then a United States Magistrate Judge, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. In his *pro se* complaint, Plaintiff asserts claims of negligence, retaliation, and deliberate indifference to a known risk of harm in violation of the First and Eighth Amendments to the United States Constitution. On August 10, 2018, Defendant filed a motion to dismiss for failure to state a claim [ECF No. 12], to which Plaintiff filed a response and brief in opposition [ECF Nos. 15, 16].

On September 14, 2018, the undersigned was sworn in as a United States District Judge. This action was reassigned to the undersigned, as presiding judge, on September 18, 2018, and was subsequently assigned to United States Magistrate Judge Richard A. Lanzillo for all pretrial proceedings on September 28, 2018.

On January 14, 2019, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that Defendant's motion to dismiss be granted as to

Plaintiff's retaliation and negligence claims, but denied as to his deliberate indifference claim. [ECF No. 26]. Objections to the R&R were due to be filed by January 31, 2019; however, no objections have been filed to date.

After *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 21st day of February, 2019;

IT IS HEREBY ORDERED that Defendant's motion to dismiss [ECF No. 12] is GRANTED as to Plaintiff's negligence and retaliation claims, but DENIED as to Plaintiff's deliberate indifference claim. The report and recommendation of Magistrate Judge Lanzillo, issued January 14, 2019 [ECF No. 26], is adopted as the opinion of the court.

s/Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
U.S. Magistrate Judge